

U.S. BANKRUPTCY COURT
District of South Carolina

Case Number: 06-03484

ORDER ON OBJECTION TO EXEMPTION

The relief set forth on the following pages, for a total of 4 pages including this page, is hereby ORDERED.

FILED BY THE COURT
12/06/2006



Entered: 12/07/2006

US Bankruptcy Court Judge
District of South Carolina

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA**

In re:)	Chapter 7
)	Case No. 06-03484-D
Mingo Chisolm, Jr.)	
Barbara Chiholm,)	ORDER ON OBJECTION TO EXEMPTION
)	
Debtors.)	
_____)	

THIS MATTER is before the Court on the objection of the Chapter 7 Trustee to the exemption claimed by the Debtors in their residence. The question before the Court is whether the Debtors may claim the more favorable exemption provided in the recently enacted South Carolina Home Security Act ("Home Security Act")¹ or whether they are limited to the lesser homestead exemption found in prior law.

FINDINGS OF FACT

The Debtors filed a joint voluntary petition for relief under Chapter 7 of the Bankruptcy Code² on August 10, 2006. The Debtor's residence consists of a mobile home and a one acre lot in Hampton County, South Carolina. The fair market value of the residence is approximately \$80,000. The residence is jointly owned, free and clear of encumbrance. The Debtors claimed an exemption of \$80,000 in their residence. The trustee filed a timely objection. All of the Debtors' unsecured credit was incurred prior to May 25, 2006, the effective date of the "Home Security Act."

CONCLUSIONS OF LAW

The filing of a bankruptcy petition creates an estate. § 541 (a)(1). A debtor may exempt certain property from the estate. § 522 (b)(1). A party in interest may object to a

¹ S.C. Code Ann. § 15-41-30(1) (2006 S.C. Acts 300).

² 11 U.S.C. § 101 *et. seq.* Further reference to the Bankruptcy Code will be by section number only.

claim of exemption within 30 days of the meeting of creditors. Fed. R. Bankr. P. 4003(b). The Bankruptcy Code provides a series of exemptions. See § 522 (b)(2), (d). The Bankruptcy Code authorizes states to "opt out" of the federal exemption scheme and restrict exemptions to "any property that is exempt under. . . State or local law that is applicable on the date of the filing of the petition." § 522(b)(3)(A). South Carolina is an "opt out" state. S.C. Code Ann. § 15-41-35.³

Prior to the passage of the "Home Security Act" South Carolina law provided an exemption of up to \$5,000 of a debtor's interest in property used as a residence (up to \$10,000 for jointly owned property). The "Home Security Act" increased the amount of the homestead exemption to \$50,000 (\$100,000 for jointly owned property). The trustee contends that the state exemption law applicable in this case restricts the debtor to the "right of homestead determined by the laws of force when the debt was contracted." *Sloan v. Hunter*, 65 S.C. 235, 43 S.E. 788, 789 (1903).

This Court recently considered and decided this issue in a series of cases. *See In re David Paul Evans*, C/A No. 06-02413, (Bankr. D. S.C. December 5, 2006). I join Judge Burris in her interpretation of both federal and state law on the exemption question. The language of the Bankruptcy Code and the proper reading of *Owen v Owen*, 500 U.S. 305, 111 S.Ct. 1833, 114 L.Ed. 350 (1991) results in the determination of exempt property on the date of the filing of the petition and not on some other date. Numerous practical considerations undergird this result. In a two party dispute it is relatively easy to look back to the date of a contract or to the incurring of an indebtedness to ascertain the law in effect at the time. In a bankruptcy case, where the financial relationships of a multitude of parties are adjusted, a fixed point of reference is necessary and that is what Congress gave us.

³ Further reference to the South Carolina Code will be by title, chapter and section number only.

Furthermore, to the extent that the state exemption law applicable in this case includes the decisional jurisprudence of South Carolina, the courts interpret statutes consistent with legislative intent where it can be determined. *Kiriakides v. United Artists Commc'n, Inc.*, 312 S.C. 271, 275, 440 S.E.2d 364, 366 (1994). Section 1 of the “Home Security Act” expresses the intention of the legislature and provides: “It is the intent of the General Assembly, because of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, to offer to the citizens of South Carolina protection for their homes in the event that financial difficulties, such as military deployment or extreme medical emergencies, occur for which bankruptcy filing may be the only available remedy.” § 15-41-30(1). The General Assembly did not limit application of the exemption statute; rather it clearly sought to increase the upper limit for the value of residential property available as a component of the fresh start to debtors with home ownership interests. The approach is holistic, is expressly in anticipation of a change in federal law, and is applicable to all the State’s citizens.

CONCLUSION

The Trustee’s objection to the homestead exemption of the Debtors is overruled.